



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF)	ORDER OF APPROVAL
ACCESS TRANSMISSION SERVICES, INC.)	
FOR RATIFICATION OF MUNICIPAL)	
CONSENTS GRANTED PURSUANT TO)	
<u>N.J.S.A. 48:3-19</u>)	DOCKET NO. TE94110536

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition filed with the Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-14, Access Transmission Services, Inc. ("ATS" or "Petitioner") seeks approval of a municipal consent granted to ATS by the City of Newark (Newark) and the Town of Kearny ("Kearny") regarding the attachment of ATS' fiber optic cable to poles owned and maintained by Verizon New Jersey, Inc. ("VNJ"), formerly known as Bell Atlantic – New Jersey, Inc. The consents of Newark and Kearny were acquired pursuant to N.J.S.A. 48:3-19, which provides in pertinent part, that "[t]he consent of the municipality shall be obtained for the use by a person of the poles of another person unless each person has a lawful right to maintain poles in such street, highway or other public place."

Petitioner, a wholly-owned subsidiary of MCI Telecommunications Corporation ("MCI"), was previously authorized by the Board to provide competitive access services and interLATA high speed private line service. Petitioner is currently constructing a fiber optic link between New York City and Newark. A portion of this new installation will be attached to VNJ poles located in the public rights-of-way of Newark and Kearny pursuant to a pole attachment agreement previously entered into between ATS and VNJ.

ATS asserted that, since it does not provide service in New Jersey pursuant to a public utility franchise, it received consents from Newark and Kearny pursuant to N.J.S.A. 48:3-19 rather than N.J.S.A. 48:2-14. ATS notes that N.J.S.A. 48:3-19 does not specify the form of municipal consent that must be granted and that it is not clear that such consents must be approved by the Board under N.J.S.A. 48:2-14. Petitioner obtained the municipal consents by way of a formal resolution from the Municipal Councils of Newark and Kearny. In order to avoid any uncertainty as to the validity of this consent, ATS seeks approval of said consents under N.J.S.A. 48:2-14.

A review of the case file in this matter indicates that the Board has not received any correspondence opposing Petitioner's request.

After review and consideration of the entire record in this matter, the Board **FINDS** that:

1. ATS is a wholly-owned subsidiary of MCI and is authorized by this Board to provide competitive access services and interLATA high speed private line service;
2. ATS is presently constructing a fiber optic link between New York City and the City of Newark, a portion of which will be attached to poles which are owned by VNJ and located in the public rights-of-way in Newark and Kearny and which are subject to a pole attachment agreement previously entered into between ATS and VNJ;
3. Consents to attach cable to VNJ poles was granted to ATS by formal resolutions of the Municipal Councils of Newark and Kearny pursuant to N.J.S.A. 48:3-19; and
4. Approval of the municipal consents requested by ATS is necessary and proper for the public convenience and properly conserves the public interest by enhancing the telecommunications service provided by ATS.

Accordingly, pursuant to N.J.S.A. 48:2-14, the Board **HEREBY APPROVES** the consents granted by the Municipal Councils of Newark and Kearny, for the attachment of fiber optic telecommunications cable by ATS to certain telephone poles which are owned by VNJ and located in the public right-of-way of Newark and Kearny.

DATED: 5/25/04

BOARD OF PUBLIC UTILITIES
BY:

(signed)
JEANNE M. FOX
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

(signed)
CONNIE O. HUGHES
COMMISSIONER

(signed)
JACK ALTER
COMMISSIONER

ATTEST:

(signed)
KRISTI IZZO
SECRETARY